IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8484 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHLAL J DESAI

Versus

AMRELI MUNICIPALITY

Appearance:

MR P.V. HATHI for Petitioner

NOTICE SERVED for Respondent No. 1

MR PREMAL JOSHI, ASSTT. GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 22/12/2000

ORAL JUDGEMENT

The petitioner challenges the order dated 6.11.1992 at Annexure "G" to the petition passed by the

Director of Municipalities, by which it was ordered that the post which was sanctioned by order dated 17.1.1992 not having been filled-up, the sanction be cancelled.

The grievance of the petitioner is that he was continuing in the post of Chemist and the sanction for the post which was granted was cancelled without considering the orders which were made by the Municipality for his appointment and continuance in the post in question.

The respondent Municipality had made a resolution on 15.7.1991, in which it was recorded that the petitioner was working as a Chemist since 1.1.1991 at a fixed salary of Rs. 1200 per month and that his request for a permanent appointment to that post was justified and that it was resolved to create one post of Chemist for the Water Works Plant of the Municipality in the pay-scale of Rs. 1400-1800-EB-2300 and that the appointment of the petitioner to the post be got sanctioned. Thereafter, on 17.1.1992, the proposal of the Municipality was accepted and the post was sanctioned but it was stated in the sanction order that the post be advertised and filled-in as per the Rules. No reference was made to the proposal of the Municipality to sanction the appointment of the petitioner to the said post proposed on the ground that he was qualified and already working as a Chemist since 1.1.1991.

On 6.11.1992, the impugned order came to be passed cancelling the sanction on the ground that the procedure for filling in the post as indicated in the sanction order dated 17.1.1992 was not followed. It is clear from the impugned order dated 6.11.1992 that the Director did not take into account the order of appointment dated 21.9.1992 passed by the Municipality after taking into account the conditions incorporated in the sanction order dated 17.1.1992. There were reasons recorded in the said order for issuing appointment of the petitioner. It appears from the impugned order dated 6.11.1992 that the sanction for the post had been cancelled without taking into account the said fresh appointment order of the petitioner dated 21.9.1992. It appears that the Regional Director by his order dated 13.10.1998 revised the pay-scale of Chemist of Amreli Municipality from Rs. 1400-2300 to Rs. 1640-2900 with effect from 1.1.1991. A copy of that order is annexed with the further affidavit filed by the petitioner.

It is clear from the record that the order dated 6.11.1992 cancelling the sanction of the post on the

ground that the procedure for filling in the post was not adopted, has been made in ignorance of the fact that the petitioner was appointed to the post in question by order dated 21.9.1992 and was holding that post when the order was passed. The said order adversely affected the petitioner whose appointment to the post was totally ignored. The impugned order dated 6.11.1992 cannot therefore be sustained and is hereby set aside, leaving it open to the respondent authorities to reconsider the matter if necessary, in light of the appointment of the petitioner made under order dated 21.19.1992. Rule is made absolute with no order as to costs.

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*/Mohandas